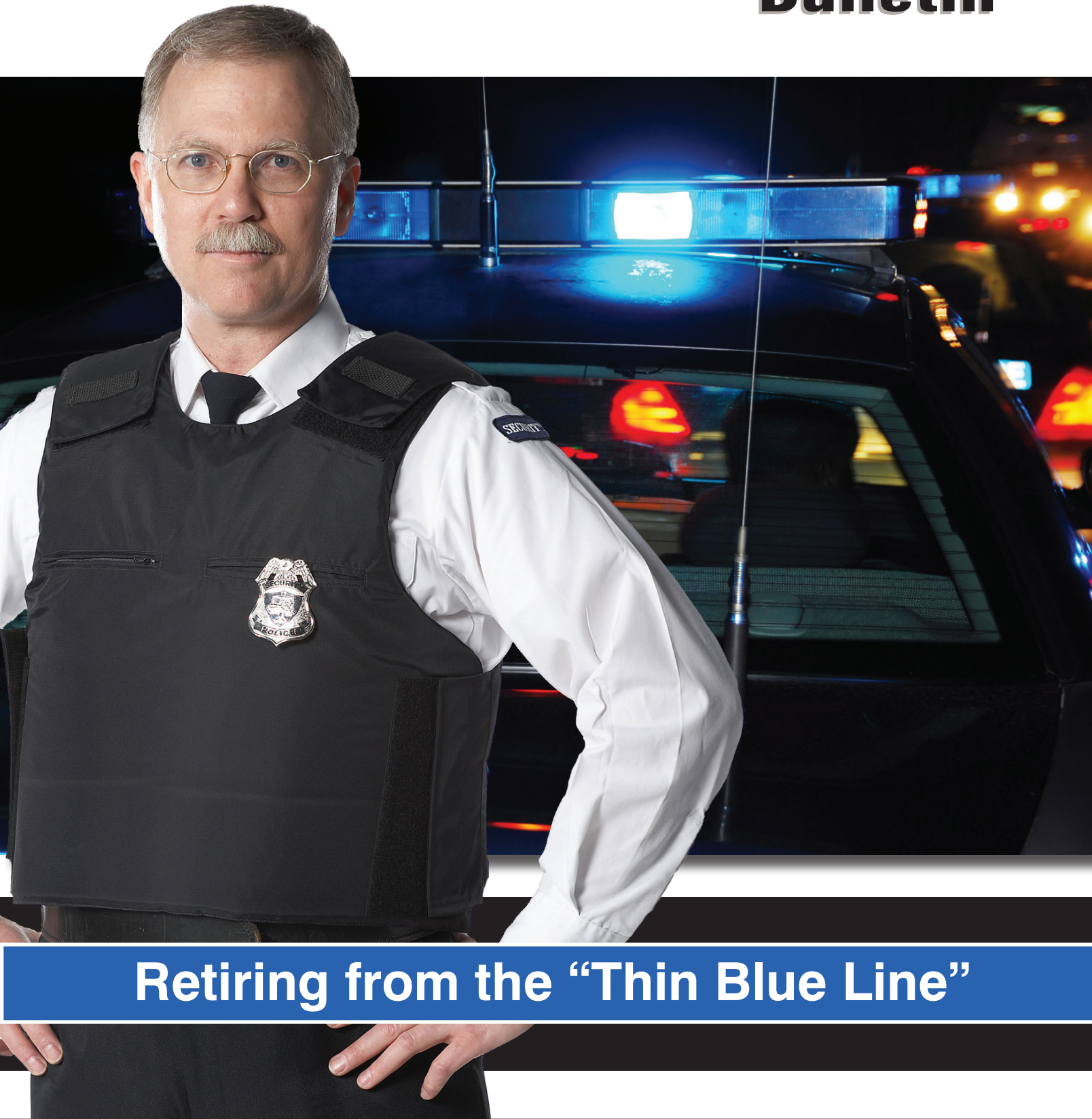




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Retiring from the “Thin Blue Line”



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Retiring from the “Thin Blue Line”

A Need for Formal Preretirement Training



By CARL B. CAUDILL, M.A. and KENNETH J. PEAK, Ph.D.

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Law enforcement agencies typically use a variety of approaches to ensure that they employ only the most competent and psychologically stable people in the applicant pool. To be deemed worthy of acceptance into this vocation, candidates must usually navigate a “hurdle process” of written, physical, and psychological tests; multiple interviews; and in-depth background investigations. Then, neophyte

officers face several months of intensive academy and field training, all to prepare them for any type of incident that they may confront in their role as society’s protectors. This protracted period of training serves to underscore that wearing a badge carries grave responsibilities, poses serious challenges, and is a daunting task.

Also inculcated into recruits is that law enforcement is not just a 9-to-5 job; rather, it is a

calling. Moreover, those who answer this call possess the ability to exercise discretionary authority, including the mandate to judiciously apply force as necessary to resolve societal issues and critical incidents. During their careers, officers must continue a training regimen designed to ensure that they have the skills necessary to perform their duties efficiently, effectively, and equitably. Owing to this training and the dependence

on fellow officers for the accomplishment of their work and the social ties that bind sworn personnel together, policing has developed its own subculture wherein officers often maintain a level of camaraderie that constitutes a surrogate family.

In stark contrast to this continual training and support while in active-duty status, officers contemplating retirement and the transition back into civilian life usually find little in the way of organized preparation and planning. The authors assert that this situation demands attention and correction because with the end of their careers looming, officers face one of the most stressful, debilitating, and consequential events of their lives.¹ After all, retirement is not an event; it is a process. Therefore, the authors

propose the creation of a formal approach to this major aspect of policing and call on law enforcement administrators to take a hands-on, proactive role in assisting their personnel during this significant life change.

RETIREMENT IN GENERAL

The recent economic downturns likely will affect normal retirement trends for years to come. What will not change, however, is that people are, and increasingly expect to continue, working beyond the usual retirement ages of 62 and 65. A contributing factor might be that those in today's labor force are generally living longer after retirement. Currently, men average an additional 17 years and women 20 years of life expectancy beyond what

most consider as the typical retirement age, several years longer than half a century ago. Although retirement rates always have risen steeply at ages 62 and 65 (since the advent of Social Security), many older people remain in the work force, either part or full time.² Indeed, an increasing proportion of baby boomers expect to work beyond age 65.³

Making the Decision

Several possible factors have a bearing on why people do or do not retire early. Health status can strongly influence the decision. Financial variables also can weigh heavily; changes in retirement incentives within the Social Security program and in private pension plans have reversed the trend toward early retirement. In addition, the labor force has come to rely increasingly on technological and interpersonal skills in a growing service economy, and computer users are 25 percent more likely to remain in the labor force.⁴ Moreover, people are less likely to retire if their spouses still work.

Employees with defined-benefit pension coverage tend to retire a few years earlier than those without,⁵ and early retirement incentive programs, particularly those involving a cash bonus, are accepted by about one-third of those given the option.⁶ Health insurance



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costs appear to only modestly discourage retirement. Additional reasons why people wish to retire early include spending more time with family (33 percent), wanting to do other things (30 percent), and not liking their work (10 percent).⁷ Finally, job-induced stress also can impact the decision to retire, with 61 percent of workers ages 55 to 59 reporting that their jobs involve “a lot of stress.”⁸

Understanding the Consequences

According to one survey, about half of today’s retirees are miserable in their postretirement lives.⁹ Retiring early may seem like a status symbol, signaling financial success, but it may not be the right action to take. People are not ready to retire until they have decided what they are going to do for an “encore.”¹⁰ And, many fail to realize that what pleases them during a 10-day vacation may not necessarily provide them with what they want from a retirement that lasts 30 years. An unforeseen potential problem also can exist when people ponder a postretirement career in the field of consulting, a road rife with aspirants and, therefore, filled with competition.¹¹

People fare better in retirement if they have planned for the event and have received support from their employer. Research has found that employee preretirement programs

can give participants a feeling of well-being and generate enthusiasm toward their respective organizations,¹² as well as result in greater satisfaction while still working and after retirement.¹³ One retirement preparation study concluded that the program significantly enhanced attendee knowledge in the areas of finance, lifestyle, health care, and social activities; it further empowered them to handle their financial and health affairs and,

“This protracted period of training serves to underscore that wearing a badge carries grave responsibilities, poses serious challenges, and is a daunting task.”

within the organization, promoted the potential for increased productivity and morale among current workers.¹⁴ Furthermore, retirees who felt their employers still cared about their well-being tended to have improved health, better social interactions, and a sense of belonging.¹⁵

Many potentially negative factors may occur upon approaching retirement from any occupation. Some involve

mentally separating from the job; forming new social circles; coping with leisure time; losing status, self-esteem, and social networks and roles established over time; and entering a world where social adjustments are based on previous social backgrounds.¹⁶

Research also has suggested that psychological and physical problems incurred *during* their careers can impact how people adapt to retirement. Individuals who, prior to retiring, exhibit poor self-actualization, have not planned for the event, face financial challenges, or are in ill health appear to have more anxieties.¹⁷ Irrational thoughts on getting older, stressful life events, poor health, and job status also may increase postretirement stress.¹⁸

RETIREMENT FOR POLICE

By virtue of union-negotiated changes in retirement benefits, law enforcement officers today often retire earlier and under far different circumstances than their civilian counterparts. Many who have worked the minimum number of years needed to retire suddenly realize that having a guaranteed pension means continuing to work in their agency for pennies on the dollar (i.e., their regular paychecks as compared with what they could earn in retirement income). Or, they may simply wish to do something



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different, perhaps less demanding and mentally and physically challenging.

Unique Considerations

While several valid reasons can exist for opting to retire, separating from a career in law enforcement carries the potential for being much more psychologically debilitating than for other members of society who leave a regular “job.” For example, a strong bond typically has developed between officers and their coworkers. They have shared the dangers, successes, and frustrations inherent in the work, as well as the prestige, authority, and status that society accords its police officers. Furthermore, when officers retire, they also lose important trappings and symbols of the position—the

badge; the uniform; and the specialized knowledge, skills, abilities, and insights for which the community has sought out and compensated them—that loomed so large in their lives for many years.

Retirement, therefore, can prove distinctly difficult for officers and can obviously foment a loss of identity and feelings of helplessness, along with instability and depression.¹⁹ Some may view leaving the agency as abandoning the “thin blue line,” a significant contributor to why severing the ties can prove highly stressful and have maladaptive psychological and physical consequences.

To compound their problems as they enter the retirement phase, officers also may have to come to terms with the fact that they have little to offer

the labor force beyond their knowledge of policing. They may be unprepared to transition into a second career or to even enjoy their newfound leisure time. This rummaging about for ways to keep occupied in retirement also can exacerbate their stress levels, heightening their feelings of isolation and withdrawal and the loss of identity, fraternity, structure, and internal control.²⁰

Mental and Physical Health Issues

Retirement can become problematic from the standpoint of mental and physical health, especially if not addressed before officers leave the job. Studies have suggested that like their civilian counterparts, officers also have similar maladaptive associations with retirement.

Some research has found that due to inherent stress factors, officers are different in their psychosocial stages of maturation, which supports the need for retirement training and more flexible retirement programs.²¹ In studying the relationship between experiences during the police career and satisfaction in retirement, other research has suggested that successful adaptation to retirement was predicated on the level of satisfaction during the career.²² In other words, those who viewed police work as “just a job” fared better in

retirement than those who attached high emotional value to their police role, did not prepare well enough financially, adopted casual thoughts about the event, or ignored psychological and social considerations of what would substitute for a lifetime involvement in policing.²³

Contemporary research also has indicated that as with their civilian counterparts, officers can encounter a number of adverse complications with retirement, such as loss of identity and self-esteem, marital problems, and boredom.²⁴ Police work provides a type of personal security that when given up, can generate, hopelessness, chaos, anxiety, and a loss of purpose.²⁵

Research in other countries has supported the assertion that officers may experience retirement difficulties. For example, a survey of 174 retired members of the Royal Ulster Constabulary in Northern Ireland (now the Police Service of Northern Ireland) found that officers who retired on medical grounds exhibited more psychopathology and ill health than those who did under normal circumstances. They perceived themselves as financially deprived and believed that gratifying psychological and physical health held the key to future life satisfaction.²⁶ In addition, a study of 1,300 retired Scottish officers revealed that early retirement

posed a risk for anxiety and depression and recommended that such officers be targeted for screening and intervention. Furthermore, subjects in this study were found to become increasingly prone to depression from the mid-50s upward, a time when many officers enter the retirement phase.²⁷

...law enforcement officers today often retire earlier and under far different circumstances than their civilian counterparts.

Trauma and Mortality Factors

Law enforcement officers experience varying forms of job-incurred trauma throughout their careers; residual effects can eventually create trauma during retirement. Officers may develop symptoms of post-traumatic stress disorder (PTSD) from carrying accumulated emotional baggage into their retirement years.²⁸ Their age plays a significant role in how they respond to the stress of trauma. Researchers have found that the incidence of PTSD and depression increased for officers

between the ages of 40 to 49, a period when many begin to think about retirement.²⁹

Mortality is another topic of research in police retirement. An extensive study of more than 2,000 officers in Buffalo, New York, found that the age-mortality rate for officers was, on average, 12 years *lower* than their civilian counterparts; health issues, such as cancer and heart disease, increased as officers drew closer to retirement; and the average life expectancy after retiring was 5.05 years *less* than that of people in other occupations.³⁰ This research also revealed that officer suicides were three times higher and appeared to occur more often just before retirement, a possible indicator of the stress of retirement at a time period when maladaptive factors can form.³¹

Not all studies of police retirements have concluded that the event itself is problematic. For example, some have found that retired officers appeared to live as long as other retired state employees³² and that officers in good health upon entering retirement had no more adverse psychological health issues than the surrounding civilian community as a whole.³³ Previous lifestyle also may contribute to postretirement difficulties, with alcohol consumption, tobacco use, irregular sleeping habits, lack of exercise, and poor diet being specifically problematic.³⁴

Some research has suggested that active-duty officers have more stress dealing with administrative issues, such as work schedules and clashes with superiors, rather than from negative contacts with the public, exposure to dangers of the job, anguish caused by human suffering, and other such mental traumas.³⁵ Studies on police suicide are mixed as well: not all conclusions point to a definitive link with either the nature of the work or the retirement process.

CONCLUSION

Those who answer the vocational call to the law enforcement profession often face their most difficult challenge at the end of their careers when they must retire from the “thin blue line.” The authors contend that retirement for officers—not unlike the nature of their work and its inherent stressors—can prove quite different from that of their civilian counterparts. Because of this occupational stress, the vagaries of retirement itself, and the fact that officers typically retire at a relatively young age, the road into and through this phase of their lives can be highly daunting and even fraught with peril. Part two of this article will focus on developing a preretirement program. ♦

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Editor
FBI Law Enforcement Bulletin

Organized Retail Crime Report

Written by the Loss Prevention Research Council and released by the Retail Industry Leaders Association (RILA), the 2008 *Organized Retail Crime Annual Report* enumerates impacts, methods, targets, and solutions related to the problem of organized retail crime (ORC), which can prove financially devastating to retailers, consumers, communities, and businesses. Compiled over a 5-year span, this unprecedented report presents an in-depth examination of a rising crime that for more than two decades has plagued retailers, harmed consumers, and funded criminal activities and organizations. The findings of this comprehensive report demonstrate the latest trends within this serial crime and delve into the intricate complexities that make up ORC.

ORC Impact

Ongoing criminal enterprises annually kill and injure innocent victims; cost American taxpayers billions of dollars in lost capital, income, operating costs, and critical tax revenues; and steal vast sums from small and large businesses. ORC schemes destroy product- and retailer-brand credibility via the contamination of medications and foodstuffs by dilution, alteration of expiration dates and contents, and movement through unsanitary or infected areas. ORC incidents also create violence, endangering innocent shop employees, customers, and drivers. Manufacturers, retailers, and consumers lose when highly stolen items are locked up for protection and cannot be readily purchased. Legitimate retailers with razor-thin profit margins must compete against

ORC groups or networks that have stolen their goods and, thus, incur no expenses before selling these products.

ORC also can injure a business, or so damage its reputation, that the organization will have to lay off employees and otherwise limit operations. Some stores are forced to close due to very heavy theft activity, thereby depriving local residents of safe, nearby shopping locations. ORC also funds other criminal activity, such as firearms trafficking, illegal immigration, and terrorism.

ORC Methods

Much greater than simple property crime, ORC is diversified and constantly evolving. Besides shoplifting, criminals employ sophisticated credit card, gift card, and check schemes. Cargo is hijacked or stolen, and dishonest employees collude with outsiders to steal from manufacturers, distribution centers, and shops. ORC networks and groups frequently cross state and international borders to sell stolen, counterfeit, or diverted goods.

The ORC problem shows no sign of slowing. With law enforcement agencies turning more resources to domestic security since 9/11, the relative vulnerability of most American retail trade businesses, the inherent violence and contamination dangers, and a steady influx of savvy criminals into the United States, ORC takes on a larger priority.

ORC Targets

Items targeted for theft usually are the same as those chosen for purchase. Selected “hot

products,” such as medical testing kits, baby formula, pain relievers, consumer electronics, video games and music, and name-brand power tools and apparel, constitute the most frequently targeted goods. Likewise, certain stores, including drug, food, and mass merchant, are heavily targeted for theft because they carry hot items and have easy access with low-risk (of apprehension) environments. Licit and illicit products, businesses, and other resources are frequently commingled by ORC fencing groups.

ORC Solutions

Both collaborative and individual solutions are aimed at directly attacking ORC operatives, as well as modulating their environment. Businesses need to reduce the supply of goods to black markets by—

- mapping and auditing their total supplier-to-consumer supply chains;
- identifying the prime theft/loss locations, processes, and individuals by determining hot product, time, and location loss-clustering patterns and establishing the root causes of loss for prioritized items and facilities;
- using technology to track and identify hot items; and
- applying evidence-based asset protection efforts by properly designing, executing, and sustaining basic daily in-store and distribution center protection processes and technologies.

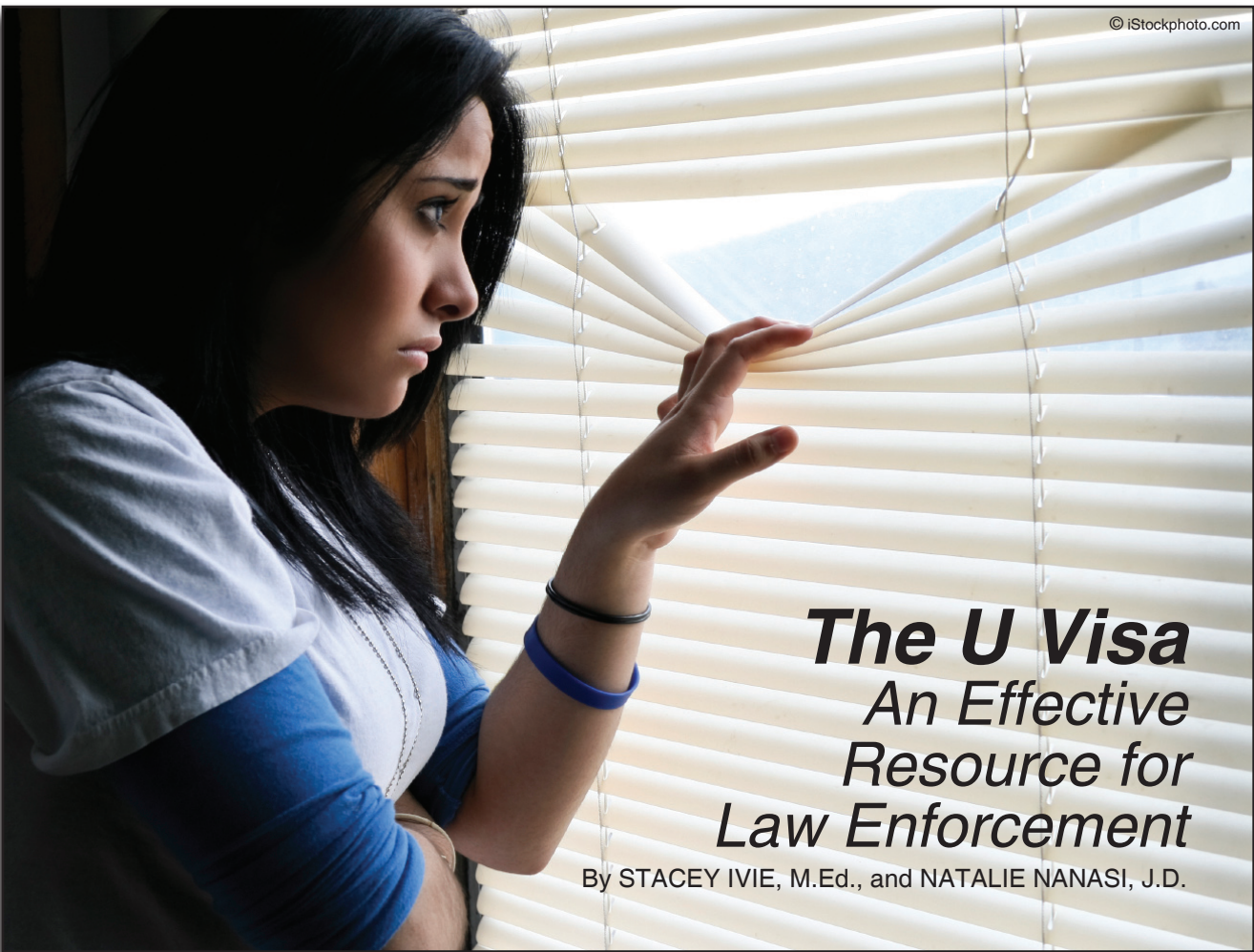
Companies also need to implement more sophisticated ORC intelligence and

investigation collection and distribution training and process protocols to deal with both basic and complex evolving criminal networks and schemes. Retailers and law enforcement need almost real-time data and a deeper understanding of ORC networks to more effectively deter and disrupt illicit networks.

Because ORC methods vary widely and continue to adapt to evolving opportunities, a vital part of improving anti-ORC operations is updating and strengthening state and federal laws, regulations, and immigration controls. Such associations as the Retail Industry Leaders Association (RILA), the Coalition Against Organized Retail Crime (CAORC), and the National Retail Federation (NRF) are working with state and national legislators and groups to create better laws and rules, as well as to develop training materials.

It is believed that real, sustained impact on ORC groups will improve once victimized businesses and law enforcement agencies form and permanently fund highly skilled regional teams that attempt to dampen demand for illicit goods and employ state-of-the-art software-based intelligence, joint communications, and investigative techniques to attack, disrupt, and disable ORC groups. To learn more about this critical issue, access the Retail Industry Leaders Association Web site, <http://www.rila.org>. ♦

Source: Information presented is excerpted from the Executive Summary of the Organized Retail Crime Annual Report, Read Hayes, PhD, CPP, Loss Prevention Research Council and University of Florida.

A woman with long dark hair, wearing a blue and white shirt, is looking out a window with white horizontal blinds. Her hand is raised, touching the blinds. The background shows a bright, hazy outdoor scene.

The U Visa ***An Effective*** ***Resource for*** ***Law Enforcement***

By STACEY IVIE, M.Ed., and NATALIE NANASI, J.D.

Law enforcement personnel strive for strong connections with all citizens. In pursuit of this goal, striking an appropriate balance—one that punishes wrongdoers while protecting victims—can present a challenge. One way that officers not only can foster better relationships with immigrant communities but also increase offender accountability, promote public safety, and help ensure that crimes translate into convictions

is to promote awareness of the U visa, which provides important immigration benefits to cooperating crime victims.

The authors believe that the fear of deportation has created a class of silent victims and undermined officers' attempts at community-oriented policing among immigrant populations. They opine that the U visa helps improve relations with these communities, increase the reporting of criminal activity, enable provision of services to

victims, and enhance the prosecution of violent perpetrators. Also, the authors feel that officers may have misconceptions about the U visa and not recognize its effectiveness as a tool. They hope that this article will help clarify the intent, purpose, and benefits of the U visa to the law enforcement community.

DESCRIPTION OF THE U VISA

Congress created the U visa—available to immigrant

victims of a wide range of serious crimes—as part of the Victims of Trafficking and Violence Protection Act of 2000, recognizing that many of these individuals, with temporary or no legal status, fear that assisting law enforcement could lead to deportation.¹ By providing noncitizen victims a means of stabilizing their legal status, the U visa encourages them to report the crimes. It helps to curtail criminal activity, protect the innocent, and encourage victims to “fully participate in proceedings that will aid in bringing perpetrators to justice.”² The U visa also can promote contact with law enforcement officers within isolated communities, which provides valuable assistance to individuals at heightened risk of victimization.

The U visa provides an avenue to legal status for immigrant crime victims who 1) have suffered substantial physical or mental abuse as a result of victimization; 2) possess information regarding the activity; and 3) offer a source of help in the investigation or prosecution.³ The incident in question must have violated U.S. law or occurred within the nation’s borders (including Indian country and military installations) or one of its territories or possessions.

The qualifying criminal activities covered by the U visa

include a long list of serious offenses or the attempt, conspiracy, or solicitation to commit any of them. Unlike other protections available to battered immigrants (such as those provided under the Violence Against Women Act), eligibility for a U visa does not depend on a marriage between the victim and abuser or the legal status of the perpetrator.⁴

To obtain a U visa, victims must demonstrate to the U.S. Citizenship and Immigration Services (USCIS) their willingness to cooperate in a qualifying investigation or prosecution by law enforcement entities, such as federal, state, or local police agencies; prosecutors; judges; or any other appropriate authority. This definition includes organizations with

criminal investigative jurisdiction in their respective areas of expertise (e.g., Child Protective Services, the Equal Employment Opportunity Commission, and the Department of Labor).⁵

BENEFITS FOR VICTIMS

Approved U-visa petitioners receive temporary legal status and work authorization, which allows these victims to support themselves and rebuild their lives in safety while assisting law enforcement.⁶ After 3 years, they may gain eligibility for lawful permanent resident status (i.e., a Green Card). Such benefits make the U visa an effective tool for bringing victims, particularly those of domestic



Detective Ivie serves with the Alexandria, Virginia, Police Department.



Ms. Nanasi is an attorney with the Tahirih Justice Center in Falls Church, Virginia.

violence who may depend on the perpetrator for legal status or economic support, out of the shadows. Research shows that “immigrant battered women want...the violence to stop, but culture, lack of support and immigration status limit their ability to deal with the violence and make them particularly vulnerable to failure in their attempts to escape a battering relationship.”⁷⁷ Often, these victims find it difficult to break free as social “isolation, exacerbated by lack of social contacts, geographic isolation, and limited mastery of English or cultural alienation... interferes with detection and accountability, makes it easier for the batterer to ignore social sanctions, promotes increased marital dependence, and increases intrafamilial exclusivity and intensity.”⁷⁸ The prospect of a U visa may eliminate the person’s fear of calling the police for help, and, once connected to legal and social service systems (e.g., victim-witness advocates, battered-women’s shelters, health- and child-care programs), some of the pressures that discourage victims of domestic violence to leave a relationship may be alleviated, allowing them to ultimately break the cycle of abuse.

Moreover, financial concerns pose significant barriers that prevent victims of crimes,

such as domestic violence, from leaving and attaining economic self-sufficiency. Because battered immigrant women are not eligible for many work opportunities and public benefits, they and their children must choose between remaining in a violent situation or facing starvation and poverty. The U visa, therefore, can afford noncitizen

“

With immigrant victims no longer afraid to cooperate... the subsequent increase in reporting will ensure the identification and apprehension of more violent criminals.

”

victims of domestic violence the same opportunities as survivors with U.S. citizenship and allow them to obtain the resources crucial in helping them escape from abusive situations.⁹

ADVANTAGES FOR LAW ENFORCEMENT

Cooperative Victims

With immigrant victims no longer afraid to cooperate

with the police, the subsequent increase in reporting will ensure the identification and apprehension of more violent criminals. Additionally, victim participation in the investigation or prosecution of cases increases the likelihood of convictions. The resulting accountability of offenders can lead to defendant rehabilitation, which, in turn, ultimately may increase the number of productive members of society, reduce crime rates, and promote public safety for all members of a community.

Use of the U visa also may cause a decline in recidivism, or the repetition of certain crimes, thus decreasing the frustration of officers and the loss of financial assistance and other services needed by victims. These issues prove particularly prominent in domestic violence cases. Statistics show that “on average, women...leave and return to an abusive relationship five times before permanently leaving....”¹⁰ Those five incidents may have involved law enforcement responding to the scene and spending numerous hours on a case, thereby decreasing officers’ availability to other crime victims. Perhaps, the prosecutor spent time and financial resources to create an evidence-based prosecution with a limited chance of conviction. In such instances, the U

visa can increase the likelihood of victim cooperation, thereby eliminating these wasted hours.

Moreover, recidivism rates logically will decrease when public service resources are provided to undocumented victims of certain pattern crimes. The ability to earn an income and receive financial assistance may drastically change the outlook of victims who had no prospect for life modification prior to the availability of the U visa, allowing them to leave a violent relationship.

Last, use of the U visa also can eliminate the current conflict faced by officers who respond to domestic violence scenes. Like many other states, the commonwealth of Virginia mandates public assistance for victims of domestic abuse. The Virginia Code requires that the officer “provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available....”¹¹ However, this directive conflicts with the prohibition against immigrant victims receiving public benefits, creating a confusing situation for first responders. Putting noncitizen victims of

domestic violence on the path to legal status can resolve this inconsistency.

Community-Oriented Policing

Community-oriented policing “promotes and supports organizational strategies to address the causes and reduce the fear of crime and social disorder through problem-solving tactics and police-community partnerships.”¹² In short, this law enforcement model is based on the principle

that only the partnership of police and citizens can successfully address the problem of crime in communities. The U.S. Department of Justice promotes community-oriented policing as a highly effective problem-solving model.

Fear of deportation breaks down the ties that bind the police and the community, and, without a joint venture involving both participants and the trust that must exist between the two parties, community-oriented policing will not work. Use

Offenses Covered by the U Visa

To obtain a U visa, the immigrant must be the victim of one or more qualifying crimes; the attempt, conspiracy, or solicitation to commit any of the acts; or any similar activity in violation of federal, state, or local criminal law.

Rape	Torture
Trafficking	Incest
Domestic violence	Sexual assault
Abusive sexual contact	Prostitution
Sexual exploitation	Female genital mutilation
Being held hostage	Peonage
Involuntary servitude	Slave trade
Kidnapping	Abduction
Unlawful criminal restraint	False imprisonment
Blackmail	Extortion
Manslaughter	Murder
Felonious assault	Witness tampering
Obstruction of justice	Perjury

8 U.S.C. 1101(a)(15)(U)(iii)

of the U visa can address this fear, giving victims more confidence about calling the police and increasing trust between community members and those sworn to protect and serve.

FREQUENTLY ASKED QUESTIONS

Although the U visa can provide substantial benefits to both victims and officers, the authors recognize that valid questions and concerns exist that may limit its acceptance and effectiveness in the law enforcement community. The answers to some frequently asked questions can help address these issues.

- *What role do law enforcement agencies have in the application process?* Agencies only complete the 3-page Form I-918 Supplement B, U Nonimmigrant Status Certification (i.e., the “law enforcement certification form”), which simply requires the department’s information; the details of the crime; and the victim’s personal data, knowledge of the incident, and helpfulness to the investigation or prosecution. Signing the form does not indicate sponsorship of the immigrant. Although the form bears significant weight because it demonstrates that the individual has met several of the eligibility criteria, the USCIS

decides whether to grant the U visa only after evaluating the totality of the circumstances. However, a U visa will not be issued without a signed law enforcement certification.

- *Who can sign the law enforcement certification form?* Heads of certifying agencies or any supervisory employee they appoint (i.e., a designated certifier) can sign the form. A designated certifier should know the

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breaks down
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community...***

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certification requirements thoroughly and be readily identifiable and accessible to immigrant crime victims; this simplifies the process for applicants, serves as a quality control measure, and prevents abuse of the U visa.

- *What if the victim stops cooperating?* Certifying departments may notify USCIS if victims do not

meet their ongoing responsibility to cooperate with law enforcement officers. However, agencies should recognize when a victim may have suffered abuse-related trauma (e.g., post-traumatic stress disorder or other debilitating emotional or physical condition) or legitimately fear retaliation from perpetrators; in such situations, agencies should be mindful of withdrawing or refusing certification. Departments also should remember that issuance of a U visa does not require any case outcomes or milestones; a victim must only be helpful.¹³ Last, USCIS assumes “an ongoing need for the applicant’s assistance”; if authorities no longer need help, the victims have fulfilled their obligation to law enforcement.¹⁴

- *Is there a quid pro quo?* No. The U visa is not given in exchange for filing a police report or for testimony at trial.
- *Are some eligible victims criminals due to their illegal presence in the United States?* The Immigration and Nationality Act (INA) determines an individual’s legal status. In enacting the Victims of Trafficking and Violence Prevention Act and creating the U visa,

Congress modified the INA. The federal government weighed all of the interests involved and ultimately created a legal status for cooperating crime victims, regardless of their means of entry into the country, based on the determination that “the purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.”¹⁵

- *Will U visas increase the filing of false police reports?* To combat false reporting, law enforcement officials should conduct a thorough investigation of any alleged crime to determine its authenticity. Concerning a false allegation, not only should officers not sign the U-visa certification form but they should initiate a criminal charge for the filing of a false police report. However, no evidence indicates that an agency’s use of the U visa will lead to the filing of false claims. The U visa covers crimes that are serious, predominantly violent, difficult to

For Additional Information

<http://www.uscis.gov>

<http://www.tahirih.org>

<http://www.legalmomentum.org/our-work/immigrant-women-program/>

fabricate, and that carry dire legal consequences for the perpetrator. Additionally, immigrants hesitant to contact authorities regarding a real crime because of their fear of deportation probably would not do so to report a false one. Moreover, U-visa regulations protect against its abuse in this way. First, they specifically exclude “a person...culpable for the qualifying criminal activity” from U-visa eligibility.¹⁶ Further, if applicants cannot demonstrate a true crime’s occurrence, their suffering from the incident, or their cooperation with law enforcement, they cannot obtain a U visa.

- *Do law enforcement agencies have to sign U-visa certification forms?* The federal government does not mandate that law enforcement agencies implement a U-visa certification process. It only serves as a resource designed to augment the effectiveness of a criminal investigation or prosecution.

However, departments that decline participation may prevent the identification and punishment of violent perpetrators. Moreover, refusing to certify a qualifying victim not only undermines the purpose of the federal law but decreases an agency’s ability to combat crime, apprehend perpetrators, foster relationships within immigrant communities, and provide crucial assistance to victims of violent crime.

CONCLUSION

The fear of deportation can cause immigrant communities to cut themselves off from police and not offer information about criminal activity, even when victimized. Consequently, predators remain on the street, emboldened because they know they can strike with a degree of impunity. As a result, societies face increased crime, including serious offenses, and the perpetrators victimize and endanger everyone, not just illegal immigrants.¹⁷

The U visa can alleviate the concerns of immigrant communities, open lines of communication, and enhance public safety for all. It then helps law enforcement officers fulfill their ultimate goal of ensuring the well-being of those they serve. ♦

Endnotes

¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, Background and Legislative Authority, retrieved from <http://bibdaily.com/pdfs/E7-17807.pdf>. See also <http://www.ilrc.org/resources/U%20Visa/Frequently%20Asked%20Questions.html>.

² http://www.uscis.gov/files/pressrelease/U-visa_05Sept07.pdf

³ The U visa is available to individuals with temporary immigration status (e.g., student, employment-based, and tourist visas or Temporary Protected Status), as well as undocumented persons with no legal status.

⁴ Because of their experience and expertise, the authors use examples of domestic violence and other crimes against women throughout the article. However, the U visa is available to both men and women and serves as a useful tool against a wide range of violent crimes.

⁵ 8 C.F.R. §214.14(a)(2) (defining a "certifying agency" for U-visa purposes).

⁶ Pursuant to 8 U.S.C. 1184(p)(2), the maximum number of issued U visas may not exceed 10,000 per fiscal year.

⁷ M.A. Dutton and G.A. Hass, "The Use of Expert Testimony Concerning Battering and Its Effects on Immigrant Women"; retrieved from <http://www.legalmomentum.org/site/DocServer/ww-wappendixcesperttestimonyconcerningbattering.pdf?docID=631>.

⁸ Joyce Nielson, Russell Endo, and Barbara Ellington, "Social Isolation and Wife Abuse: A Research Report," in *Intimate Violence: Interdisciplinary Perspectives*, ed. Emilio C. Viano (Bristol, PA: Taylor and Francis, 1992); and Bruce Rounsaville, "Theories in Marital Violence: Evidence from a Study of Battered Women," *Victimology: An International Journal* 11 (1978): 21.

⁹ National Immigration Law Center Fact Sheet on the Women Immigrants Safe Harbor Act; retrieved from http://www.nilc.org/immspbs/cdev/wish/WISH_2-pgr_3-26-04.pdf.

¹⁰ http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_domestic_violence.html

¹¹ VA Criminal Procedure Code §19.2-81.3.

¹² U.S. Department of Justice, Office of Community Oriented Policing Services, "What Is Community Policing?" retrieved from <http://www.cops.usdoj.gov/Default.asp?Item=36>. See also David Allender, "Community Policing: Exploring the Philosophy," *FBI Law Enforcement Bulletin*, March 2004, 18-22; Clyde Cronkhite, "Fostering Community Partnerships That Prevent Crime and Promote Quality of Life," *FBI Law Enforcement Bulletin*, May 2005, 7-10; John Ellison, "Community Policing: Implementation Issues," *FBI Law Enforcement Bulletin*, April 2006, 12-16; and Carl Peed, "The Community Policing Umbrella," *FBI Law Enforcement Bulletin*, November 2008, 22-24.

¹³ U visa regulations broadly define the concept of helpfulness, to include victims who have been helpful in the past, are currently being helpful, or are likely to be helpful in the future. 8 CFR 214.14(b)(3).

¹⁴ 8 C.F.R. §214.14(a)(2).

¹⁵ U Visa Regulations, Document Summary, 8 C.F.R. § 214.14.

¹⁶ 8 C.F.R. §214.01(a)(14)(iii).

¹⁷ David Harris, "Avoidable Disaster: Police Enforcing U.S. Immigration Law"; retrieved from <http://jurist.law.pitt.edu/forumy/2006/10/avoidable-disaster-police-enforcing-us.php>.

Wanted: Photographs



The *Bulletin* staff is always looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use color prints, digital photographs, and slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to

Art Director, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135 or e-mail to leb@fbiaacademy.edu.

Leadership Spotlight

The Power of a Smile

Recently, my mother ended a long and courageous battle with bone cancer on her own terms and passed from this world. Doctors and hospice nurses had ceased their efforts to accurately forecast her passing as she defied all odds and continued living and fighting bravely. None of this surprised my brother or me as mom always did things her way, even if that way did not conform with the norm. She was a person who sought advanced education, a leader and supervisor in private industry, and an endurance athlete long before any of these aspects of life became popular for women.

It was during her long hospital and rehabilitation stints that I noticed a simple, yet effective, leadership quality that mom had mastered. No matter how dire her condition or how painful, whenever medical professionals entered her room to inquire about her well-being or lack thereof, she always greeted them with a warm smile, turned the conversation (or tables, so to speak), and asked how they were and how their day was going. The effects of this simple gesture soon became apparent to even a casual observer. Without question, the professionals who deal with end-stage illness are among the most dedicated and hardworking anywhere. However, it appeared that they soon became even more attentive, caring, and professional toward mom. Many times, staff members commented on mom's positive attitude and her beautiful smile. Apparently, these extremely professional people could be motivated to perform at an even higher level of excellence by mom's quiet ability to create a more positive environment and show genuine concern for them.

To a great degree, our best leaders have the ability to increase the capabilities of those they lead or supervise by fostering a workplace attitude favorable to positive results. If leaders convey positive qualities, such as a can-do

attitude, genuine caring toward both people and missions, and a quiet confidence regarding themselves and those around them, great tasks can and will be accomplished. Conversely, if those in a position of leadership complain about their workload and stress level or create stress by exhibiting negative personality traits toward work situations and self-perceived pressures, we constantly see underachievement and poor morale. In fact, the workplace becomes an uncomfortable location of toxicity and discontent.

The attitude of leaders in stressful situations always will have a direct impact on the performance of those who follow them. We in law enforcement see support of this statement daily during high-risk arrest situations; tactical operations; and, of course, crisis management. The world of sports also can demonstrate this theory. I recall reading about a situation in baseball that best exemplifies this thought process. Many years ago, Derek Jeter, a perennial all-star of the New York Yankees, was a young player in his first World Series. After a stressful game, which decided the Series, a reporter asked him how he remained so calm in such a high-pressure situation. He responded, "I looked down the bench and saw Mr. Torre (team manager). He seemed so confident and self-assured; I knew everything would be all right."

Real leaders, not simply ones in title, have the ability to create a positive environment of productivity by making those around them feel better about the situation at hand and themselves. Sometimes, that result can be obtained by exhibiting or fostering confidence or simply by making people feel good about themselves with the power of a smile. ♦

Special Agent Kevin J. Crawford, a member of the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.

Notable Speech



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Prevailing Wisdom From Then Till Now

By Michael F. Masterson

Good afternoon and welcome to family, friends, distinguished guests, and colleagues. Most important, congratulations to the members of the 153rd Peace Officer Standards and Training Basic Academy. We are extremely proud of the commitment you made choosing policing as your career and for the dedication and perseverance you have given to your training. For the families, thank you for your love, encouragement, and support. That support for their initiative and desire to become a peace officer is critical. This is an honorable profession—one dedicated to keeping our communities safe and protecting others. It involves placing service to others above self, being called unpopular names, working long hours without sleep, and occasionally seeing fellow human beings at their worst behavior.

The young men and women seated in front of me are here today because of the values you have instilled in them, and they will be successful in their careers as a result of that foundation. They have been carefully screened, trained, and prepared by others, but your guidance has been instrumental in equipping them for their new roles. It is even more important to continue that support throughout their careers.

What I have chosen to share with you today is the wisdom I received early in my own career as a young police officer back in the 1970s from my dad, who also was a police officer and chief. It is the same advice that I have offered to my son, an officer in Wisconsin. It has worked for traditionalists like my dad, baby boomers like me, late Generation Xers like my son, and the newest generation of employees, the millennials.

Chief Masterson heads the Boise, Idaho, Police Department. He delivered this speech to graduates of the Idaho Peace Officer Standards and Training Academy.



Timeless Advice

Always be true to yourself. This job will require you to draw on your personal convictions and courage to face ethical challenges. Morton Kondracke reminded us so eloquently that “one’s dignity may be assaulted, vandalized, and cruelly mocked, but it cannot be taken away unless it is surrendered.” Surrendering personal convictions never is an option.

Remain faithful to your sacred oath, and recognize the badge of the office you hold as a symbol of public trust. Very few others in society are called upon for such important duties. Police officers cannot lead a double life. Professional and personal lives are woven together. We cannot “do as I say” at one time of the day and “not as I do” when we take off the uniform. We are role models for others. We need to remain mindful of our special position in society, realizing that the public holds us to a higher standard of personal conduct. You may find this challenging at times, but the career you imagine now is only possible if you have integrity in all respects of your life.

Enforce the laws and serve your community with respect and fairness. Apply the law to others during your tour of duty as you would want it applied to you, or your family, the remaining hours of the day. It is never acceptable to break the law to enforce it. As police officers, we are entrusted with a special obligation to uphold the U.S. Constitution, Idaho law, and local ordinances. If the law is to be honored, it first must be respected by those who enforce it. Therefore, know the limits of your authority. On the front line of upholding the laws of our land, we must know the appropriate boundaries. Extra legal remedies cannot and will not be tolerated.

Use force judiciously, morally, and with restraint. Policing in a democracy, we, the police, represent the laws of the community. Our system of government is remarkable in that no one group or organization has absolute power. And, as a first-line defender of that great system, we must jealously protect and guard it. Treat others with respect and dignity. Stay on guard against becoming rude, disrespectful, or demeaning. Your department’s image, our profession’s reputation, our colleagues’ morale, and the badges we proudly wear must never be tarnished. As the newest stewards of that culture, thank you for stepping forward to help us preserve that sacred value.

Share responsibility with citizens for improving safety and the quality of life. Idaho, like the rest of America, is diverse and growing even more so every day. Value that diversity. Community policing is based on mutual trust. Public trust is a precious commodity defined as the faith citizens have in us—police officers charged with protecting their safety and basic freedoms. We must find ways to build relationships and communicate with all the people we serve, not just those with money, influence, or

power. The majority of the people who need us the most can afford us the least.

You will not come in at the end of a long day thinking you have changed the world, but you may leave knowing that you made the difference in the life of a single person. Be optimistic as there always is tomorrow. You will find that we do make a difference, albeit one life at a time.

Sir Robert Peel, the father of modern policing, gave us key principles on which policing is founded today. We police our communities not based on fear but, instead, grounded on receiving the

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This is an honorable profession—one dedicated to keeping our communities safe and protecting others.

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cooperation of the public predicated upon respect and approval for what we do. They are centered around his premise that “the police are the public and the public are the police; the police being the only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.” Peel was a brilliant man remembered most for framing these tenets of policing. But, he also was known but not given much credit as incorruptible, honest, and having a strong work ethic. He built those values into his writings. He reminded us of our true empowerment—to recognize that the power of the police to fulfill their functions depends upon public approval of their existence, actions, and behavior, as well as on their ability to secure and maintain public respect.

Conclusion

Take the wisdom I have shared with you today, combine it with the values that brought you here, and make it part of your daily work. This includes doing what is right, even when no one is looking; being honest with ourselves and others; living by the golden rule; and conducting ourselves in such a way that our core values are not diminished by what we say or do. Our integrity challenges us to walk our talk and make our deeds reflect our words. The challenge for you tomorrow will be to merge the personal values you live by with the professional training you have just received and become the peacekeepers and protectors—those who serve others with dignity, respect, fairness, and justice—that our citizens expect and deserve. ♦

Bulletin Honors



The *FBI Law Enforcement Bulletin* seeks submissions from agencies who wish to have their memorials featured in the magazine’s Bulletin Honors department. Needed materials include a short description, a photograph, and an endorsement from the agency’s ranking officer. Submissions can be mailed to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135, or e-mailed to leb@fbiacademy.edu.

Supreme Court Cases 2008-2009 Term

By LISA A. BAKER, J.D.



In the most recent term, the U.S. Supreme Court decided several cases of interest to the law enforcement community. A number of them addressed fundamental principles of criminal procedure, including significant rulings relating to the search of a vehicle incident to arrest; the taking of statements following the appearance of an individual before a judge; and the Sixth Amendment Right to Confrontation Clause as it relates to the use of certificates of forensic examination in lieu of actual testimony in a criminal trial. Also of interest to the law enforcement community is a decision relating to a claim of reverse discrimination in the promotional process. This

article includes a synopsis of these cases in addition to a summary of cases of interest to law enforcement that the Supreme Court has agreed to consider next term.



DECIDED CASES

Arizona v. Gant, 129 S. Ct. 1710 (2009)

In this case, the Supreme Court clarified that the Fourth Amendment does not permit broad authority to search a motor vehicle incident to arrest simply because the arrestee is at the site of the arrest, which has been the general assumption since the Court's holding in *United States v. Belton*.¹ Rather, the Court in *Gant* clarified that the need to search the interior of the vehicle incident to arrest is limited to situations furthering the rationales behind this warrantless search authority—to protect officer safety and to prevent the destruction of

evidence. The Supreme Court held that these rationales can be furthered by limiting the authority to search the vehicle to situations where “the arrestee is within the reaching distance of the passenger compartment at the time of the search or if it is reasonable to believe the vehicle contains evidence of the offense of the arrest.”²

Under the facts in this case, Gant was not within reaching distance of the vehicle at the time of the search (he was handcuffed and locked inside the police car) and there was no reason to believe the car contained evidence of the crime for which he was arrested (driving with a suspended license). Therefore, the search of his car violated the Fourth Amendment, and the contraband discovered during the search was suppressed.³



Special Agent Baker is chief of the Legal Instruction Unit at the FBI Academy.



***Montejo v. Louisiana,*
129 S. Ct. 2079 (2009)**

This case addressed whether the Sixth Amendment right to counsel was invoked by a defendant at a state proceeding when the judge ordered the appointment of counsel for the defendant on murder charges, even though the defendant stood mute at the hearing and made no such request or assertion. After the defendant’s court appearance, police approached him and advised him of his *Miranda* rights, which he waived. He agreed to accompany police on a drive to locate the murder weapon. During this trip, he wrote a letter of apology to the victim’s family. Defense counsel sought to suppress the letter, arguing that the police could not initiate the interrogation of the defendant once he invoked his Sixth Amendment right to counsel, which the attorney argued occurred at the initial appearance. Under established Supreme Court precedent set forth in *Michigan v. Jackson*,⁴

if the Sixth Amendment right to counsel was invoked at the initial court hearing, police could not initiate subsequent interrogation of the defendant on the murder charges in the absence of the defendant’s attorney, and any confession derived from this interrogation would be subject to suppression. The trial judge permitted the government to introduce the letter, a ruling later affirmed by the Louisiana Supreme Court on the grounds that because the defendant did not say anything at his court appearance, he did not invoke his Sixth Amendment right to counsel.⁵ The defendant appealed this ruling to the Supreme Court, arguing that because counsel was appointed, the right was invoked, and *Michigan v. Jackson* should apply. The Supreme Court chose not to decide whether the defendant invoked his Sixth Amendment right to counsel, choosing instead to overrule *Michigan v. Jackson*.⁶

As a result of *Montejo*, the Sixth Amendment does not preclude law enforcement from initiating contact with a defendant in an effort to obtain a confession following a defendant’s request for counsel or the court’s appointment of counsel at the initial appearance or similar state proceeding. The Court reasoned that the antibadgering protection of *Michigan v. Jackson* did not outweigh its costs—the suppression

of an otherwise voluntary confession.⁷ Moreover, in cases where the defendant remains in custody, the Fifth Amendment protection against compelled self-incrimination will continue to effectively protect defendants from police badgering after the defendant has requested the assistance of counsel at the time of custodial interrogation. The Fifth Amendment will protect a defendant who invoked the Fifth Amendment right to counsel from government-initiated interrogation while remaining in continuous custody.⁸ The majority in *Montejo* was not concerned about the circumstances when the Fifth Amendment no longer applies, reasoning that these “uncovered situations are the least likely to pose a risk of coerced waivers” and stating that “when a defendant is not in custody, he is in control, and need only shut his door or walk away to avoid police badgering.”⁹



***Corley v. United States*,
129 S. Ct. 1558 (2009)**

In *Corley*, the Supreme Court addressed the interplay of a federal statute addressing the admissibility of confessions in federal court, Title 18 U.S. Code §3501, and Rule 5 of the Federal Rules of Criminal Procedure, governing the presentment requirement. In this case, Corley was arrested at 8 a.m., and several hours later, he was transported to a local hospital to treat a minor injury sustained during the arrest. After 3 p.m., he was transported to the local FBI office to be interviewed. At approximately 5:30 p.m., he began confessing. About an hour later, he requested a break and was held overnight. The interview began again the next morning, during which he provided a signed written confession. Corley then was presented to a magistrate judge at 1:30 p.m., nearly 30 hours after his arrest. Corley argued that his confession should be suppressed as it was obtained during a period of unnecessary delay and, thus, subject to suppression under Supreme Court precedent known as *McNabb-Mallory*,¹⁰ which “generally render[s] inadmissible confessions made during periods of detention that violat[e] the prompt presentment requirement of Rule 5(a).”¹¹ Rule 5 of

the Federal Rules of Criminal Procedure generally requires that a federal officer making an arrest “must take the defendant without unnecessary delay before a magistrate judge.”

The district court ruled in favor of the government, holding that the confession was obtained within a reasonable period of time after Corley’s arrest because the time in which he obtained medical treatment should be excluded from calculating the delay, as the confession appeared otherwise voluntary.¹² The Third Circuit Court of Appeals affirmed, concluding that the federal statute governing the admissibility of confessions (§3501) in federal court imposed a pure voluntariness standard on judges. As such, as long as the confession was provided voluntarily, it would be admissible regardless of whether the delay in getting the arrestee to the presentment was unreasonable.¹³ The Supreme Court agreed to hear this case to address the impact of §3501 on the admissibility of confessions obtained during a period of unnecessary delay.¹⁴

In reversing and remanding the case, the Supreme Court rejected the government’s assertion that §3501 should be construed as a general blanket of protection, allowing for the admissibility of statements

provided they are voluntary. Rather, §3501 should be read in concert with Supreme Court precedent calling for the suppression of statements obtained as a result of an unnecessary delay in presenting an arrestee before a magistrate.¹⁵ Furthermore, as stated by the Supreme Court, “delay for the purpose of interrogation is the epitome of unnecessary delay.”¹⁶

Section 3501 creates a safe-harbor period for assessing the reasonableness of the delay. The statute states in relevant part that a confession “shall not be inadmissible solely because of delay in bringing [the defendant] before a magistrate judge [provided] the confession is found by the trial judge to have been made voluntarily...and if such confession was made or given by [the accused] within six hours immediately following his arrest or other detention.”¹⁷ If the confession was obtained beyond the safe-harbor period, its admissibility will depend on whether the delay was unnecessary even if the confession is otherwise voluntary. The Supreme Court remanded the case instructing the lower court to determine whether Corley’s confession was actually obtained within the 6-hour safe-harbor period and if not, whether the delay was unnecessary.¹⁸



***Arizona v. Johnson,*
129 S. Ct. 781 (2009)**

In this case, law enforcement officers patrolling a Tuscon neighborhood pulled over a vehicle containing several occupants for a minor infraction. At the time of the stop, the officers did not have any reason to suspect the occupants of the vehicle were engaged in criminal activity. While the lead officer was dealing with the driver, one of the other officers engaged the defendant, a passenger in the car, in conversation and asked him to step out of the vehicle to talk with her. The officer observed that he wore clothing indicative of gang membership and that he was holding a police scanner. Based on her concerns regarding possible gang affiliation, the officer conducted a limited search for a weapon by patting down his waistband area where she discovered a gun. The defendant was convicted

of a gun-possession charge. The Arizona Court of Appeals reversed his conviction, concluding that because the officer did not have reason to suspect the defendant-passenger was engaged in criminal activity, the officer “had no right to pat him down for weapons, even if she had reason to suspect he was armed and dangerous.”¹⁹ The Arizona Supreme Court let the decision stand. The government appealed the ruling to the U.S. Supreme Court.

The Supreme Court reversed the Arizona Court of Appeals, citing precedent addressing the nature of the encounter between officers and individuals detained as part of a roadside encounter, and now such encounters are “especially fraught with danger to police officers.”²⁰ The Supreme Court noted that consistent with previous rulings, a passenger in a vehicle stopped is seized within the meaning of the Fourth Amendment, just as the driver is seized, at the initiation of the stop and until it is over and that the passenger is not free to end the encounter or move about as he wishes.²¹ The officer’s efforts to engage the defendant in conversation about gang activities did not transform the encounter into an unreasonable seizure. As stated by the Court,

An officer’s inquiries into matters unrelated to the justification for the traffic

stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.²²

The Supreme Court reversed the lower court ruling, remanding the case for further proceedings as the lower court had not addressed whether the officer had reasonable suspicion that the defendant was armed at the time of the stop.²³



***Kansas v. Ventris,*
129 S. Ct. 1841 (2009)**

In *Kansas v. Ventris*, the Supreme Court addressed whether a statement obtained in violation of the defendant's Sixth Amendment Right to Counsel could be used to impeach the defendant when he chose to take the stand and provided testimony that conflicted with his earlier statements. In this

case, the defendant was arrested and charged with various crimes, including murder and aggravated robbery. Prior to trial, officers placed a cell-mate informant into the defendant's cell, instructing him to just keep his ears open for incriminating statements. According to the informant, at one point, he commented to the defendant that he seemed to have "something more serious weighing on his mind."²⁴ The defendant responded by admitting to killing the victim. The defendant took the stand at his trial and testified that his accomplice was the shooter. The government sought to introduce the statements the defendant provided to the informant to impeach his testimony. The defendant argued that they should not be admitted as they were obtained in violation of his Sixth Amendment Right to Counsel, prohibiting the government from deliberately eliciting information about charged criminal activity without either a waiver of the right or counsel being present.²⁵ The government conceded that the statements could not be used in the case in chief.²⁶ However, the government argued that the statements should be admissible for the purpose of impeaching the defendant. The trial court allowed the statements to be used, and the defendant was convicted at trial. The Kansas Supreme Court reversed the defendant's

conviction, concluding that the use of the statements violated the Sixth Amendment.²⁷ The U.S. Supreme Court disagreed.

In reaching this result, the Supreme Court found that the violation of the Sixth Amendment Right to Counsel occurs at the critical stage in which it is denied a defendant, not when evidence is sought to be used at trial. Therefore, the case does not involve preventing a constitutional violation but, rather, the proper scope of the remedy for a violation that has already occurred. In this case, the interests furthered by excluding the statements are "outweighed by the need to prevent perjury and to assure the integrity of the trial process."²⁸ The Supreme Court held that "the informant's testimony, concededly elicited in violation of the Sixth Amendment, was admissible to challenge [the defendant's] inconsistent testimony at trial."²⁹





***Pearson v. Callahan*,
129 S. Ct. 808 (2009)**

In this case, a civil suit alleging a violation of constitutional rights was brought against officers following their warrantless entry into the plaintiff's residence and his arrest for possession of methamphetamine. The entry and subsequent arrest of the plaintiff occurred after a police informant, working at the direction of the police, engaged in a drug transaction inside the plaintiff's home. Once the informant signaled police that the drug transaction had occurred, police entered the residence, relying on the informant's consent. The plaintiff successfully challenged the admissibility of evidence seized as a result of the entry in his criminal case, arguing that the warrantless entry was not supported by consent or exigent circumstances.³⁰ Following this victory, he brought a civil action

in federal court, arguing that his Fourth Amendment rights to be free from unreasonable searches and seizures were violated.

The officers sought a dismissal of the lawsuit on the grounds that they should be entitled to qualified immunity as they did not violate a clearly established constitutional right. The officers argued that several courts had recognized a consent-once-removed doctrine, permitting a warrantless entry into a home when consent has already been granted to an officer or informant who then observes evidence in plain view. The district court recognized that this theory may be in jeopardy in light of the Supreme Court's decision in *Georgia v. Randolph*;³¹ however, it concluded that the officers should be afforded qualified immunity as it was reasonable for them to believe that their conduct

was lawful.³² The Tenth Circuit Court of Appeals reversed, concluding that the consent-once-removed doctrine was limited to situations in which an undercover officer enters someone's residence with that person's consent and then summons law enforcement inside once the criminal activity occurs.³³ The circuit court concluded that this doctrine did not apply to situations in which an informant has been admitted into the residence. The circuit court further concluded that the relevant right that was violated was the right to be free from unreasonable searches and arrests and that this right is clearly established. With this as the foundation, the circuit court concluded that no reasonable officer would have believed that the warrantless entry into the plaintiff's home was reasonable and, therefore, qualified immunity was denied.³⁴

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The Supreme Court agreed to hear this case, primarily focusing on the continued viability of the rigid two-step process to resolve the issue of qualified immunity³⁵ set forth by the Court in *Saucier v. Katz*.³⁶ In *Saucier*, the Supreme Court mandated a two-step process requiring the courts to first address whether the facts as alleged by the plaintiff make out a violation of a constitutional right and if so, the court must then decide whether the right at issue was clearly established at the time of the alleged misconduct. After reviewing the impact of the *Saucier* process in subsequent litigation, the Supreme Court concluded that “while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory.”³⁷ Instead, judges should exercise discretion in how the two prongs of the qualified immunity analysis should be addressed in light of the facts and circumstances of the case at hand.

Turning to the facts of this case, the Supreme Court ruled that the law was not clearly established at the time of the alleged constitutional violation and, thus, qualified immunity is appropriate. The Supreme Court noted that in earlier rulings, the consent-once-removed doctrine had been accepted by other courts, including in the context of private citizens acting as

informants, and prior to the decision in this case, no other court of appeals had issued a contrary decision.³⁸



***Melendez-Diaz v. Massachusetts*,
129 S. Ct. 2527 (2009)**

During the prosecution of the defendant for possession of cocaine, the prosecutor introduced a certificate from a state laboratory documenting the analysis of the substance seized on the defendant at the time of his arrest as a certain quantity of cocaine. As provided under state law, the certificate was sworn to by an examiner before a notary public and submitted as part of the government’s case in chief. The defendant was convicted, in part, based on this evidence. The defendant challenged his conviction, arguing

that his Sixth Amendment right to confront the witness against him was violated by the introduction of a certificate as opposed to the testimony of the examiner. The Supreme Court agreed. The Supreme Court referred to its previous decision in *Crawford v. Washington*³⁹ to support its position that the Sixth Amendment requires the examiner to testify in person. In *Crawford*, the Supreme Court held that a defendant has a right to confront witnesses providing testimony against him or her. Accordingly, a witness’ testimony is not admissible unless the witness appears at trial or if not available, the defendant was able to cross-examine the witness previously.⁴⁰ Applying these principles to this case, whether the substance found on the defendant was cocaine was a fact in question and would be the testimony that the examiner would be expected to provide. The Sixth Amendment requires that this type of testimonial statement be provided by the witness against the accused as opposed to the introduction of a certificate. This decision will have a significant impact in cases that previously relied upon the introduction of similar certificates in support of forensic examinations, a common practice in many prosecutions for driving under the influence and drug possession.



***Herring v. United States,*
129 S. Ct. 695 (2009)**

The Court in this case was presented with the issue of whether the exclusionary rule should apply when an arrest occurs that should not have because the original arrest warrant had actually been recalled months prior to its execution. The defendant was arrested after it was determined that a warrant for his arrest was outstanding. During the search incident to his arrest, drugs and a firearm were seized. The defendant sought to suppress this evidence as the arrest should not have happened in the first place. The arrest warrant had been recalled but remained in the system apparently due to negligent records handling by police personnel. The Eleventh Circuit Court of Appeals ruled that the evidence should not be suppressed as the purpose of

the exclusionary rule would not be furthered by its suppression given that there was no indication of any malicious or willful misconduct on the part of the police.⁴¹ The Circuit Court noted that this result is supported by the Supreme Court's analysis in *Arizona v. Evans*,⁴² holding that the purpose of the exclusionary rule is not served when court personnel are the source of the error. The Supreme Court agreed to hear the case to resolve the split of opinion that existed on the applicability of the exclusionary rule in the face of police clerical error.⁴³

The Supreme Court ruled that the evidence should be admitted. In reaching this conclusion, the Supreme Court engaged in a detailed analysis of the history and purpose of the exclusionary rule, concluding that its deterrent effect would not be furthered in cases where the decision to arrest the defendant was based on reasonable but mistaken assumptions, namely that an outstanding arrest warrant existed.⁴⁴ The Supreme Court did caution that its holding does not mean that all errors, such as those that occurred in this case, are immune from the exclusionary rule. The Court stated,

If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the

groundwork for future false arrest, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation.⁴⁵



***Ricci v. DeStefano,*
129 S. Ct. 2658 (2009)**

In a closely watched employment rights case of interest to the law enforcement community, the Supreme Court addressed the sensitive issue of racial discrimination. At issue was the city of New Haven's decision to discard test results following the administration of objective examinations to determine those firefighters qualified for promotion. The city decided to discard the results based on a statistical racial disparity. If the results of the examinations were used to fill the vacancies, the top 10 candidates for the lieutenant position were

all white, and with respect to the captain position, the results produced 7 white and 2 Hispanic candidates.⁴⁶ The city decided to disregard the results of the examinations, concluding that it would face a claim of disparate-impact discrimination in violation of Title VII of the Civil Rights Act of 1964⁴⁷ if the results were considered and promotions followed.⁴⁸

A group of firefighters, including Frank Ricci, filed suit, arguing that by declining to use the test results, the city violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution, as well as Title VII of the Civil Rights Act, by engaging in intentional discrimination.⁴⁹ The city countered by arguing that it had a good faith belief that if it certified the test results, it would have violated the disparate-impact prohibition in Title VII in which case it could not be liable under another theory of liability.⁵⁰ The lower courts agreed with the city.⁵¹

Disparate-impact discrimination is established by a plaintiff by demonstrating that the employer uses an employment practice, such as a promotional examination, that serves to exclude a significant portion of a particular group. The employer then can attempt to defend itself by demonstrating that the practice is job related and consistent with business necessity.⁵²



The Supreme Court reversed the lower courts, concluding that by failing to use the examination results, the city engaged in unlawful intentional discrimination in violation of Title VII of the Civil Rights Act.⁵³ In support of its ruling, the Supreme Court determined that the city engaged in race-based decision-making with respect to the examination results in violation of Title VII unless there is a valid defense. As stated by the Court,

Whatever the City's ultimate aim—however well intentioned or benevolent it might have seemed—the City made its employment decision because of race. The City rejected the test results solely because the higher scoring candidates were white.⁵⁴

To engage in this type of intentional discrimination, the Court concluded that the

employer had to have a “strong basis in evidence to believe” it will be subject to disparate impact liability if it fails to take the race-based action.⁵⁵ Applying this standard, the Court concluded that the city did not meet this standard simply by arguing the existence of a significant statistical disparity as liability would be appropriate only if the examinations were not job related and consistent with business necessity.⁵⁶ The Supreme Court noted that there was no evidence suggesting the examinations were deficient, citing the substantial amount of testimony supporting their validity.⁵⁷ The Court stated,

Fear of litigation alone cannot justify an employee's reliance on race to the detriment of individuals who passed the examinations and qualified for promotions.⁵⁸

The Court concluded by noting that once the city certifies the examination results and if the city ultimately faces a disparate-impact lawsuit, the city would avoid liability based on the strong basis in evidence to believe that had it not certified the results, it would have been subjected to a claim of intentional discrimination.⁵⁹

CASES FOR NEXT TERM

The Supreme Court has agreed to hear three cases of interest to law enforcement next term.



***Maryland v. Shatzer*, 954 A.2d 1118 (Md. 2008), cert granted 129 S. Ct. 1043 (2009)**

This case places the issue of whether a passage-of-time exception exists to the barrier placed on law enforcement in initiating contact to interview an in-custody subject who has

previously invoked the *Miranda* right to counsel and has remained in continuous custody. In this case, the defendant was incarcerated when he was approached by law enforcement about allegations that he sexually abused his 3-year-old son. He was advised of his *Miranda* rights and initially agreed to talk, but once he found out what the interview related to, he invoked his right to counsel. The investigation remained closed for several years during which time the defendant remained incarcerated. New information surfaced about the case nearly 3 years later while the defendant still was in prison serving his sentence in the unrelated case. A different detective went to the prison in another attempt to interview him. This time, the defendant waived his rights and made incriminating statements.

During his trial, the defendant argued that the statements should be suppressed as they were obtained in violation of *Edwards v. Arizona* and its progeny.⁶⁰ The state court of appeals agreed with the defendant, holding that the mere passage of time is not sufficient to lift the protections afforded a defendant who invokes the *Miranda* right to counsel and remains in continuous custody.⁶¹

This case may clarify the scope of the protections afforded a subject who is incarcerated

and has previously invoked the *Miranda* right to counsel and provide guidance as to whether law enforcement officers are precluded from contacting the subject, even if the subject is simply serving a sentence.



***United States v. Comstock*, 551 F.3d 274 (4th Cir. 2009), cert. granted, _ S. Ct. _ (2009)**

The constitutionality of a federal statute contained in Title 18, U.S. Code, §1465, allowing the federal government to place in indefinite civil commitment individuals determined to be sexually dangerous persons will be addressed by the Supreme Court in this case. The statute was enacted as part of the Adam Walsh Child Protection and Safety Act of 2006 and was designed to protect children from sexual exploitation and sexual predators.⁶² Federal courts that have addressed §1465 are split as to whether Congress

exceeded its authority under the Commerce and Necessary and Proper Clauses when enacting the commitment provision.⁶³



***State v. Powell*, 998 So.2d 531, cert. granted, _ S. Ct. _ (2009)**

The Supreme Court agreed to hear this case involving the adequacy of *Miranda* warnings administered as part of a custodial interrogation. The warnings provided to the defendant in this case were set forth in a standard police department form. The form did not explicitly indicate that the defendant had the right to have an attorney present during questioning. The pertinent language contained in the form stated, “You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before questioning. You have the right

to use any of these rights at any time you want during this interview.” The Florida Supreme Court ruled that the warnings as set forth above were insufficient to properly inform the defendant of his right to counsel according to the dictates of *Miranda*. ♦

Endnotes

- ¹ 541 U.S. 615 (1981).
- ² *Arizona v. Gant*, 129 S. Ct. 1710, 1723 (2009).
- ³ For a more thorough discussion of the *Gant* decision, refer to Richard G. Schott, “The Supreme Court Reexamines Search Incident to Lawful Arrest,” *FBI Law Enforcement Bulletin*, July 2009, 22-31.
- ⁴ 475 U.S. 625 (1986). See also *Wade v. Jackson*, 388 U.S. 218 (1967) and *Massiah v. United States*, 377 U.S. 201 (1964) for the general principle that once adversarial proceedings are initiated against the accused, the Sixth Amendment guarantees the right to have counsel present at all critical stages of the prosecution.
- ⁵ *State v. Montejo*, 974 So.2d 1238 (La. 2008).
- ⁶ *Montejo v. Louisiana*, 129 S. Ct. 2079, 2091 (2009).
- ⁷ *Id.* at 2090-2091.
- ⁸ See *Edwards v. Arizona*, 451 U.S. 477 (1981); *Minnick v. Mississippi*, 498 U.S. 146 (1990).
- ⁹ 129 S. Ct. at 2090.
- ¹⁰ *McNabb v. U.S.*, 318 U.S. 332 (1943); *Mallory v. U.S.*, 354 U.S. 449 (1957).
- ¹¹ *Corley* at 1563, quoting *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 354 (1994).
- ¹² *United State v. Corley*, 2004 WL 1102637 (E.D.Pa.).
- ¹³ *United States v. Corley*, 500 F.3d 210 (3rd Cir. 2007).
- ¹⁴ *Corley v. United States*, 129 S. Ct. 29 (2008).
- ¹⁵ *Corley v. United States*, 129 S. Ct. 1558, 1568-1569 (2009).

¹⁶ *Corley* at 1563, quoting *Mallory v. United States*, 349 U.S., 449, (1957).

¹⁷ 18 U.S.C. 3501(c). The statute further provides that the time limit is not to apply “in any case in which the delay in bringing such person before [the magistrate judge] beyond such six-hour period is...reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate judge].”

¹⁸ *Corley* at 1572.

¹⁹ *State v. Johnson*, 217 Ariz. 58, 170 P.3d 667, 673 (2007), cert. granted, *Arizona v. Johnson*, 128 S. Ct. 2961 (2008).

²⁰ *Arizona v. Johnson*, 129 S. Ct. 781, 787, quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983).

²¹ *Id.* at 787, citing *Brendlin v. California*, 551 U.S. 249 (2007).

²² *Id.* at 788, citing *Muehler v. Mena*, 544 U.S. 93 (2005).

²³ See 129 S. Ct. 781 at FN 2.

²⁴ *Kansas v. Ventris*, 129 S. Ct. 1841, 1844 (2009).

²⁵ See *Massiah v. United States*, 377 U.S. 201 (1964).

²⁶ In his opinion, Justice Scalia stated,

The State has conceded throughout these proceedings that [the defendant’s] confession was taken in violation of *Massiah*’s dictates and was therefore not admissible in the prosecution’s case in chief. Without affirming that this concession was necessary, see *Kuhlman v. Wilson*, 477 U.S. 436 (1986), we accept it as the law of the case.

129 S. Ct. at 1845.

²⁷ *State v. Ventris* 285 Kan. 595, 176 P.3d 920 (Kan. 2008), rev’g *State v. Ventris*, 142 P.3d 338 (Kan. 2006), cert granted, 129 S. Ct. 29 (2008).

²⁸ *Kansas v. Ventris*, 129 S. Ct. 1841, 1846, quoting *Stone v. Powell*, 428 U.S. 465, 488 (1976).

²⁹ *Id.* at 1847.

³⁰ See *State v. Callahan*, 93 P.3d 103 (2004).

³¹ 547 U.S. 103 (2006) (holding that if a party who has authority over premises is physically present and objecting, another



party cannot provide consent and law enforcement is bound by the party withholding consent).

³² *Callahan v. Millard City*, 2006 WL 1409130 (2006).

³³ *Callahan v. Millard City*, 494 F.3d 891 (10th Cir. 2007).

³⁴ *Id.* at 895-899.

³⁵ *Certiorari granted by Pearson v. Callahan*, 128 S. Ct. 1702 (2008). “[I]n granting certiorari, we directed the parties to address the question whether *Saucier* should be overruled.” 129 S. Ct. at 815 (2009).

³⁶ 533 U.S. 194 (2001).

³⁷ *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009).

³⁸ See *United States v. Paul*, 808 F.2d 645 (1986); *United States v. Diaz*, 814 F.2d 454 (7th Cir. 1987); *United States v. Bramble*, 103 F.3d 1475 (9th Cir. 1996); *United States v. Pollard*, 215 F.3d 643 (6th Cir. 2000); *State v. Henry*, 133 N.J. 104, 627 A.2d 125 (1993); *State v. Johnston*, 184 Wis.2d 794, 518 N.W.2d 759 (1994).

³⁹ 541 U.S. 36 (2004).

⁴⁰ *Id.* at 54.

⁴¹ *United States v. Herring*, 492 F.3d 1212 (11th Cir. 2007).

⁴² 514 U.S. 1 (1995).

⁴³ *Certiorari granted, Herring v. U.S.*, 128 S. Ct. 1221. For cases opposing the application of the exclusionary rule, see *United States v. Santa*, 180 F.3d 20 (2nd Cir. 1999); *United States v. Sutherland*, 486 F.3d 1355 (C.A.D.C. 1997). For cases supporting its application, see *Hoay v. State*, 71 S.W.3d 573 (Ark. 2002) (exclusionary rule to apply if the wrongful arrest was due to law enforcement personnel as opposed to court personnel); *White v. State*, 989 S.W.2d 108 (Texas 1999) (exclusionary rule applicable where law enforcement personnel failed to remove recalled warrant).

⁴⁴ *Herring v. United States*, 129 S. Ct. 695, 700-703 (2009).

⁴⁵ *Id.* at 703.

⁴⁶ *Ricci v. DeStefano*, 129 S. Ct. 2658, 2666 (2009).

⁴⁷ 42 U.S.C. §2000e-2(k).

⁴⁸ *Ricci* at 2669-2670.

⁴⁹ Intentional discrimination is addressed in 42 U.S.C. §§2000e-2(a).

⁵⁰ *Ricci* at 2671.

⁵¹ See *Ricci v. DeStefano*, 554 F.Supp.2d 142 (D.Conn. 2006), *aff’d* by *Ricci v. DeStefano*, 264 Fed.Appx. 106 (2nd Cir. 2008)(unpublished), opinion withdrawn and superseded by *Ricci v. DeStefano*, 530 F.3d 87 (2nd Cir. 2008).

⁵² See 42 U.S.C. §2000e-2(k)(1)(A)(i).

⁵³ The Supreme Court did not rule on the Equal Protection argument, noting that the case could be resolved on the statutory claim, citing *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) (per curiam) (“[n]ormally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.”).

⁵⁴ *Ricci* at 2674.

⁵⁵ *Id.* at 2675.

⁵⁶ *Id.* at 2675-2676.

⁵⁷ *Id.* at 2680-2681.

⁵⁸ *Id.* at 2681.

⁵⁹ *Id.*

⁶⁰ See *Edwards v. Arizona*, 451 U.S. 477 (1981); *Minnick v. Mississippi*, 498 U.S. 146 (1990).

⁶¹ 954 A.2d 1118, 1124, citing *Minnick v. Mississippi*, 498 U.S. 146 (1990) for additional support.

⁶² Pub.L.No.109-248, §302, 120 Stat. 587.

⁶³ See *United States v. Comstock*, 551 F.3d 274 (4th Cir. 2008) (Congress exceeded its authority); *United States v. Tom*, 558 F.Supp.2d 931 (D.Minn. 2008) (exceeded Congress’ authority); *United States v. Wilkinson*, _ F.Supp.2d _, 2009 WL 1740358 (D.Mass. 2009) (exceeding Congress’ authority); *United States v. Abregana*, 574 F.Supp.2d 1123 (D.Haw. 2008) (within congressional authority); *United States v. Shields*, 522 F.Supp.2d 317 (D.Mass. 2007) (within congressional authority).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.

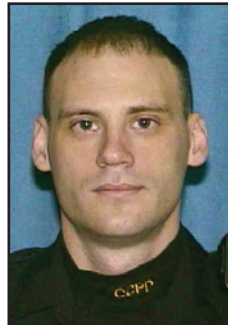


Lieutenant Weck

At the beach while on vacation with his family, Lieutenant Robert Weck of the Summit, New Jersey, Police Department observed a father and son being swept away from the shore by a rip tide and in danger of losing their lives. Despite the considerable risk he faced, Lieutenant Weck entered the water to rescue them. He removed the young man from the ocean and assisted the father until other rescuers arrived.



Sergeant Brown



Officer Rainwater



Officer Adair

Sergeant Matt Brown, Officer Joshua Rainwater, and DUI Task Force Officer Robert Adair of the Cobb County, Georgia, Police Department responded to a single-vehicle rollover crash. Upon their arrival, the officers discovered a pickup truck on fire just inside a tunnel. Disregarding their own safety, they immediately began struggling to remove the male driver. Despite flames, smoke, and

burns on their hands, the officers eventually freed the man from the wreckage and took him to safety. The victim was transported to a local hospital, and the officers received treatment for smoke inhalation and burns.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135.

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Patch Call



Many aspects of the community and the area's natural beauty are reflected in the patch of the Farmington, New Mexico, Police Department. Shiprock, the blue structure, was formed 26 million years ago and is located west of Farmington; Tse Bit'ai, or the Rock with Wings, is sacred to the Navajo people; the three meeting rivers represent many cultures uniting into one; and the breathtaking Farmington sunset reflects a bright future.



The patch of the Clarinda, Iowa, Police Department resembles a kernel of corn, the state's chief cash crop. Inside the kernel's borders, the 4-H clover recognizes Clarinda as the birthplace of 4-H. Within the clover are depictions of the local school mascot; a trombone, remembering Clarinda as musician Glenn Miller's birthplace; and the A's baseball program, where some major leaguers played.